

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

JAMES N. ESTEP,

Petitioner,

v.

DAVID BALLARD, Warden,

Respondent.

)
)
)
)
)
)
)
)
)
)

CIVIL ACTION NO.: 3:10-0396

ORDER

The Respondent has filed with the Court and served on Petitioner, who is acting *pro se*, a Motion for Summary Judgment and Memorandum in Support (Document Nos. 12 and 13.) Accordingly, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), Petitioner is hereby notified that he has the right to file a response to Respondent's Motion and submit Affidavit(s) or statements subject to the penalties of perjury, exhibits, and/or other legal or factual material supporting his positions and issues in the case as they are challenged by Respondent in the aforesaid Motion. Petitioner is advised that actual statements in Affidavits or Declarations submitted by Respondent will be accepted as true unless Petitioner sets forth facts in response indicating the existence of a genuine or actual dispute of fact for trial. In response to Respondent's Motion, Petitioner must set out either in his own Affidavit or sworn statement or the Affidavits or sworn statements of other witnesses, specific facts which show that Petitioner and Respondent actually disagree about one or more important and material fact or facts presented by this case. In the Affidavits and exhibits, Petitioner should address, as clearly as possible, the issues and facts stated in the Motion and in the Affidavits submitted by Respondent. If Petitioner chooses to file a response in opposition to the Motion, it is hereby **ORDERED** that Petitioner's response shall be filed with

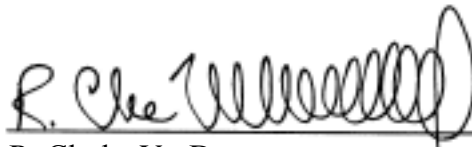
the Clerk of this Court on or before **Friday, July 2, 2010**. Petitioner shall serve copies of his response in opposition to the Respondent's Motion on counsel for the Respondent.

Petitioner is also advised that a failure to respond to the Respondent's Motion may result in a recommendation of denial of the relief sought in the Petition and dismissal of this suit. In preparing a response, Petitioner should be aware of the fact that a knowing assertion of a falsehood in order to avoid dismissal could, if proven, constitute perjury punishable by law.

Following service of Petitioner's response to Respondent's Motion, if such is filed, Respondent will have seven (7) business days within which to file a reply, and the parties are advised that, after the passage of the time provided for a response and a reply, the Court will consider the Motion for Summary Judgment ready for decision.

The Clerk is hereby directed to mail a copy of this Order to Petitioner, who is acting *pro se*, and to counsel of record.

ENTER: June 1, 2010.



R. Clarke VanDervort
United States Magistrate Judge